

February 16, 2017

Dear Labor Committee of the Connecticut General Assembly,

My name is Luis G. Luna and I am a worker organizer at Make the Road CT and a resident of New Haven CT. For the past seven months, I have been talking to dozens of workers in the retail industry about issues with scheduling practices. During this time I have learned that on-call practices are a burden in people's lives and limit their ability to plan their time with loved ones and make it virtually impossible for them to arrange and afford childcare and school in a moments notice. Furthermore, the not knowing how much they are getting paid in any given week because of these practices make their lives hard.

For this reason we would like to suggest language for SB 787 AN ACT PROHIBITING "ON-CALL" SHIFT SCHEDULING that would ensure that all workers are protected from these practices. The language below makes sure that protection against unscheduled shifts would apply to regularly scheduled shifts that are cancelled, not just on-call shifts

SB 787 AN ACT PROHIBITING "ON-CALL" SHIFT SCHEDULING.

An employee, who by request or permission of the employer, reports for duty on any day, or is required to be available to work whether or not assigned to actual work, shall be compensated for a minimum of four hours earnings at his or her regular rate unless given adequate notice 24 hours prior to the beginning of the shift that the employee does not need to report to work. Such compensation shall apply when employer requires an employee to be available or "on call" to work, and to contact the employer or its designee or wait to be contacted by the employer or its designee to determine whether the employee must report to work.

This language offers several advantages. As currently drafted, Bill 747 does not provide compensation for employees. While penalties for violations should be available under the Labor Code, employees would have to file claims with the Department of Labor or seek redress in court, which is far less efficient and less effective in promoting compliance than a compensation-based system. Further, in light of existing reporting pay regulations, Bill 747 would create an inconsistent, irrational regulatory framework: if an employer cancels an employee's shift 12 hours in advance, the employer has violated the law and may be subject to penalties. Yet if the employer waits for the employee to report to work and sends her home with minimum compensation, the employer faces no liability.

Employers are accustomed to adhering to the long-standing reporting pay regulations. Workforce technology and payroll systems are already set-up to automatically compensate workers under existing reporting pay regulations, and can be updated easily to adhere to the new law. Employers that continue to use on-call scheduling, and compensate their employees accordingly, can rest assured that they are not at risk for litigation or penalties. Extending this compensation-based compliance system is far preferable to creating new enforcement burdens for employers, employees, and the Department of Labor.

In addition, the language offered above captures a broader array of last-minute schedule changes to ensure that employers do not violate the spirit of the law. Technological innovations have allowed employers to exploit unintended regulatory loopholes. The advent of cellphones has allowed employers to evade reporting pay regulations by calling workers at the last minute, or requiring workers to call, to confirm whether they needed to work rather than reporting in person. Yet as drafted, Bill 747 only targets some forms of this practice while allowing other last-minute changes. The bill would "prohibit the employment practice of requiring an employee to call an employer prior to a scheduled shift to confirm that the employee is needed for the shift," but says nothing about employers that call employees to confirm or cancel their on-call shift. Moreover, many employers use workforce management technologies that workers can download as mobile applications on smartphones. Rather than requiring a phone call, employers can simply send a notification through the app to cancel or confirm an on-call shift. The effect on workers is the same: requiring unlimited availability with no guarantee of pay.

Thank you for your attention,

Luis G. Luna